

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 767 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MUNSAFKHAN YASINKHAN PATHAN

Versus

STATE OF GUJARAT

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Appearance:

MR KB ANANDJIWALA for Petitioners

MR. BD DESAI, LD. APP. Respondent No. 1

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/08/96

ORAL JUDGEMENT

This revision application arises out of the judgment and order of conviction and sentence rendered by the learned Chief Judicial Magistrate, Mehsana in Chief Case No. 16/87 on 5/11/1990 u/S. 506 (2) of the Indian Penal Code (for short 'IPC') and confirmed by the learned Additional Sessions Judge in Criminal Appeal No. 92/1990 on 17/6/1991.

2. The facts as per the prosecution story may briefly be stated :

The complainant, a Dy.S.P. at the relevant point of time i.e. 14/12/1985 was on visitation of C.R. No. 263/1985 and C.R. No. 265/1985 of Chansma Police Station and he had his night halt at Chansma Rest House. Three S.R.P. constables were present at the said Rest House. At about 1.00 a.m. i.e. 1 O'clock at night police constable Nagajibhai Mavjibhai informed the said Dy.S.P. at the Rest House that the petitioners (accused persons of C.R. No. 263/1985) had been to the police station. In the meantime the petitioners went to the Rest House and it is alleged that they started misbehaving and having quarrel with the complainant. They in the conversation with the complainant stated that they might be arrested by the complainant. In fact this they said although they were protected by the anticipatory bail order passed in their favour by this Court. The complainant and 3 S.R.P. constables, therefore, were proceeding towards the police station from the Rest House. On their way, it is alleged, the petitioners who were police constables serving in Chansama Police Station uttered the words as to how many days the S.R.P. constables would be by the complainant's side and that one day they would have to die and they would see as to how many days the complainant would survive (live). The complaint is alleged to have been lodged at about 6.00 a.m. in the morning against the petitioners.

3. On the aforesaid prosecution case charge for offence punishable u/S. 506 (2) of the IPC was framed by the learned Chief Judicial Magistrate. The petitioners pleaded not guilty. The matter proceeded with trial and ultimately ended in conviction and sentence as stated above.

4. The petitioners' defence was that the whole case was falsely made out against them. According to their defence, they were serving as constables in Chansama Police Station. At that time anti-reservation agitation was on. During that point of time some persons and one Fakir Jivasha Fakrusha of village Sunsar committed decoity in village Motap. The accused persons of that case were history-sheeters. One P.S.I. Mr. Chauhan took over the charge of further investigation. All the petitioners were assisting in the investigation of the said case. As the accused persons were alleged to be men of confidence of the complainant of that case, Dy.S.P. Mr. Zala was pressing hard not to have any investigation regarding discovery/recovery of Muddamal. The entry of

this nature was made by the P.S.I. in station diary. For that reason, Dy.S.P. Mr. Zala was having grudge against the petitioners as well.

5. It was further the defence of the petitioners that in connection with C.R. No. 235/85 registered on the complaint given by one Bharatkumar the investigation was taken away by the order of the complainant from P.S.I. Mr. Chauhan and the same was handed over to P.S.I. Mr. R.D. Patel, who was the Investigating Officer of C.R. No. 16/87 i.e. the present case filed against the petitioners. It was further the defence of the petitioner that P.S.I. Mr. R.D. Patel was trapped for demanding and accepting illegal gratification of Rs. 7,000/-. Since the petitioners were not showing any inclination to favour the P.S.I. Mr. R.D. Patel in the aforesaid trap case, in order to pressurise the petitioners, aforesaid Jivasha Fakrusha and others were taken into confidence and criminal cases were initiated against the petitioners. The petitioners were, therefore, required to approach this Court by way of filing anticipatory bail applications. On account of filing of complaints one after another against the petitioners, this Court was required to grant blanket bail to the petitioners. In order to give the order of this Court the petitioners went to the police station and gave written report alongwith the order of this Court. In spite of the order of this Court, the petitioners were detained in police station till 5.00 p.m. on the next day compelling them to call their advocate Mr. Manojkumar at the police station. It was only thereafter that they were released on bail. The petitioners were, therefore, required to move an application for contempt of Court before this Court. It is under these circumstances that the present complaint came to be filed in order to harass the petitioners and out of grudge against them.

6. Aforesaid defence of the petitioners appears to have not been accepted by the Courts below in rendering and confirming the conviction and sentence of the petitioners.

7. I have heard Mr. K.B. Anandjiwala, learned advocate appearing for the petitioners and Mr. B.D. Desai, Ld. APP appearing for the State. Mr. Anandjiwala in the first instance submitted before this Court that the courts below committed manifest error in dealing with the aspect of delay in lodging the FIR with regard to complaint in question so late as 6.00 a.m. although the complainant was all throughout at the police

station. A reference in this connection has been made to the evidence of P.S.O. (Police Station Officer) Mr. Virabhai that the complainant made entry in the station diary as well as has given his complaint at the same time. It has been submitted that according to the evidence the copies of the FIR book were with police constable Chhaganbhai, who resumed duty at 8.00 a.m. (on the next day). Hence, the offence could not have been registered till upto the time police constable Chhaganbhai resumed duty at 8.00 a.m. In this light it has been submitted that it could never have been expected from a person like the complainant, a Dy.S.P., to give complaint after lapse of such a long time. Whereas the complainant has not given any explanation regarding the delay so caused, the Courts below have proceeded on explaining the delay on their own and that is how they have exceeded the jurisdiction in the matter of appreciation of evidence.

8. It has further been submitted by Mr. Anandjiwala, learned advocate for the petitioners that even in the matter of appreciation of evidence the Courts below have ignored the vital discrepancies in not mentioning the words alleged to have been uttered by the petitioners in the charge, in not appreciating the evidence from the stand point of the words alleged to have been uttered by the petitioners and in not weighing the evidence of the complainant in comparison with the evidence of the police constables and other witnesses and in not appreciating the fact that the complainant was the Dy.S.P. and was in company of 3 S.R.P. constables, with the result that neither the petitioners could have uttered the words of threatening as stated above nor the complainant could have at any point of time remained in fear under the alleged words.

9. It has been finally submitted by Mr. Anandjiwala that the complainant could not have been alarmed by the so called alleged threat in as much as he was accompanied with 3 Armed Police Constables, in as much as he did not forthwith lodge complaint and in as much as there is no evidence to indicate that he was not in a position to attend to his duties thereafter properly. In support of this last submission Mr. Anandjiwala has placed reliance upon a decision of the Bombay High Court in the case of State of Maharashtra v. Prakash Mahadeo Mane reported in Criminal Law Reporter (Maharashtra) 1980 (1) p. 146.

10. In reply Mr. B.D. Desai, Ld. APP submitted that all the aforesaid submissions revolve round appreciation of evidence which exercise could not be

undertaken by this Court in a revision application u/S. 397 read with sec. 401 of Code of Criminal Procedure. It is true that in exercise of revisional jurisdiction the evidence has not to be reappreciated. However, the question which arises is whether the Courts below have focussed their attention on the necessary ingredients of the offence u/S. 506 of the IPC. One of the ingredients of the offence u/S. 506 r/w. S. 503 of the IPC is that the complainant should have been alarmed by the threat alleged to have been administered to him. This would have bearing on the intention of the accused to alarm the complainant. This ingredient has been noticed by the Bombay High Court in the case of State of Maharashtra v. Prakash Mahadeo Mane (supra). There in para. 8 of the citation it has observed as under :-

"As regards the offence under section 506 of the Penal Code, the learned trial Magistrate himself has recorded an order of acquittal on a very sound reason, viz. that the complainant could not have been alarmed by the so called threat, inasmuch as he was properly attending the duties thereafter also. The provisions of section 506, therefore, would not be attracted."

11. Examining the case of the complainant as a whole placed before the learned Magistrate, it would clearly appear that there is no evidence worth the name on the aforesaid salient ingredient of the offence. On the contrary the evidence clearly indicates a clear absence of any apprehension/fear so as to cause alarm to the complainant. Although the complainant was a Dy.S.P. present all through has lodged complaint after a considerable lapse of time. There were three Armed S.R.P. Constables present at the Rest House, where the complainant was having his overnight stay. The words alleged to have been uttered by the petitioners in fact did not cause any alarm to the complainant right from the time they were alleged to have been uttered. There is no evidence worth the name to indicate that the complainant was not in a position to attend to his duties at any point of time after he lodged the complaint. Thus in the admitted facts and circumstances of the case, there is a clear error of law committed by the Courts below as noticed hereinabove. If the matter had been examined from the stand point of the aforesaid feature of the offence, the evidence could not have been said to have brought home the offence against the petitioners beyond reasonable doubt.

12. The result is that this petition deserves to be allowed. The impugned judgments and orders of conviction

and sentence of one month and fine of Rs.500/- each are hereby quashed and set aside. Fine, if paid, shall be refunded to the petitioners. Bail bond shall stand cancelled. Rule made absolute in the aforesaid terms.

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